APPEAL NO. 021524
FILED ON JULY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 9, 2002. The hearing officer determined that the compensable injury of _____, did not extend to include bilateral ulnar nerve neuropathy and that the impairment rating (IR) is 15% as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The appellant (self-insured) appeals the IR determination on sufficiency grounds, asserting that the IR includes a rating for an ulnar nerve lesion which was found to be noncompensable. The respondent (claimant) urges affirmance. The hearing officer's extent-of-injury determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury to his cervical spine on _____. As indicated above, the compensable injury did not extend to include bilateral ulnar nerve neuropathy. The parties further stipulated that the claimant reached maximum medical improvement (MMI) on October 25, 2001. On June 21, 2001, the self-insured's required medical examination (RME) doctor certified the claimant with a 6% IR under Table 49, Section (II)(c) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The RME doctor noted no sensory or motor deficits and no loss of range of motion (ROM) for the cervical spine. The claimant's treating doctor subsequently certified a 17% IR—6% under Table 49 (II)(c); 7% for cervical loss of ROM; 4% for loss of strength in the upper extremities; and 1% for loss of sensation. The claimant was later examined by a Commission-appointed designated doctor, who certified the claimant with a 15% IR—6% under Table 49 (II)(c); 7% for cervical loss of ROM; and 2% for ulnar nerve sensory deficit above the mid-forearm of the nonpreferred side. The designated doctor explained his rating concerning the ulnar nerves, in a subsequent letter, stating that the ulnar nerves showed abnormalities "specifically at the elbow." Notwithstanding her determination that the compensable injury does not include bilateral ulnar nerve neuropathy, the hearing officer accorded the designated doctor's report presumptive weight and adopted the designated doctor's IR certification stating, as the basis for her decision, "while the Claimant failed to prove an ulnar nerve neuropathy, the upper extremity sensory deficits stem from the cervical injury." The self-insured asserts that the designated doctor's 2% rating for ulnar nerve sensory deficits relates to a noncompensable injury and requests that such rating be subtracted from the claimant's IR.

Upon review of the record, we find no indication by the designated doctor that the claimant's ulnar nerve sensory deficits "stem from the cervical injury." Rather, it

appears that the designated doctor based his rating for ulnar nerve deficits on what he believed to be a compensable ulnar nerve lesion "specifically at the elbow." The only doctor to relate the claimant's motor and sensory deficits to the cervical spine was the claimant's treating doctor, who stated, "The ulnar nerve irritation is from the brachial plexus which originates in the cervical spine." In the absence of a similar statement by the designated doctor, the hearing officer cannot infer from the evidence, as it exists, that the designated doctor rated the ulnar nerve sensory deficits as part of the compensable injury to the cervical spine. Accordingly, the hearing officer's IR determination is not supported by the evidence. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In his response to the appeal, the claimant asserts that the self-insured is precluded from seeking a change of the designated doctor's certification, for failing to utilize the procedures set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(d)(5) (Rule 130.6(d)(5)). The rule provides, in relevant part:

> When the extent of the injury may not be agreed upon by the parties . . . the designated doctor shall provide multiple certifications of MMI and [IRs] that take into account the various interpretations of the extent of the injury so that when the commission resolves the dispute, there is already an applicable certification of MMI and rating from which to pay benefits as required by the statute.

Rule 130.6(d)(5) intends to impose a duty on the designated doctor, in instances such as this one, to prevent the overpayment of impairment income benefits (IIBs) by the carrier (in this case the self-insured). 26 TexReg 10910 (2001). The rule contemplates that the self-insured would pay IIBs in accordance with the designated doctor's rating based upon the conditions that the self-insured believes are part of the compensable injury and then pay per the alternative rating if it is later determined that the compensable injury includes the disputed conditions. *See* Preamble at 26 TexReg 10914 (2001). Rule 130.6(d)(5), therefore, cannot be read to preclude the self-insured from seeking a change of the designated doctor's certification in this instance.

For reasons stated above, the hearing officer's IR determination is reversed and the case is remanded for clarification and/or reexamination by the designated doctor with regard to the claimant's rating for ulnar nerve sensory deficits, in view of the determination that the compensable injury does not extend to include bilateral ulnar nerve neuropathy. The designated doctor is to be advised that the Commission has administratively determined that the compensable injury does not include bilateral ulnar nerve neuropathy and that he is to either reexamine the claimant or clarify his IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section

410.202 (amended June 17, 2001). *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the self-insured is **SELF INSURED** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Michael B. McShane
Appeals Judge